FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-76

BYRON MORTON MILLER,
Petitioner,

vs.

BOARD OF LAW EXAMINERS, STATE OF TENNESSEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Tennessee

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To the Supreme Court of Tennessee

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States

Byron Morton Miller, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Tennessee entered in the above entitled case on the 5th day of September, 1972.

OPINIONS BELOW

The opinion of the Supreme Court of Tennessee is unreported and is printed in Appendix A hereto, infra, page A-1. The judgment of the Supreme Court of Tennessee is printed in Appendix A hereto, infra, page A-7.

JURISDICTION

The judgment of the Supreme Court of Tennessee (Appendix A, infra, page A-7) was entered on the 5th day of September, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether petitioner (respondent below), Byron Morton Miller, license to practice law can be revoked without a hearing on charges brought against him.

2. Whether Section 29-104 of Tennessee Code Annotated provides procedural due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

STATUTE INVOLVED

The state statute involved is Tennessee Code Annotated 29-104 and is as follows:

> Certification and admission of successful applicants. —Such board shall certify to the Supreme Court the names of all applicants who shall have passed the required examination; provided, such person shall in other respects comply with the rules regulating the admission to practice as attorneys, solicitors and counselors, which compliance shall be determined by said board before examination. Upon such certificate, if the Supreme Court shall find that such person is of full age and good moral character, and otherwise qualified, it shall enter an order licensing and admitting him to practice as attorney, solicitor and counselor in all the courts of the state, which license if procured by fraud, may be revoked at any time within two (2) years.

STATEMENT

On February 4, 1970, petitioner, Byron Morton Miller, was granted a license to practice law after successfully completing the bar examination and otherwise meeting all the requirements of the State of Tennessee to become licensed as an attorney.

On February 3, 1972, the respondent (petitioner below), Board of Law Examiners, filed a petition in the Supreme Court of Tennessee which is the highest Court of the State and charged that the petitioner had obtained his license to practice law by fraud (Appendix A, page A-4).

The petitioner filed a motion to dismiss on the ground that the statute, 29-104 Tennessee Code Annotated, which was the basis of the petition, did not provide him with procedural due process (Appendix A, page A-8).

The motion of the petitioner to dismiss was overruled and the Court ordered his name to be stricken from the rolls of attorneys and he was prohibited from engaging in the practice of law in the State of Tennessee without any hearing as to the merits of the charges made by the respondent.

REASONS FOR GRANTING THIS WRIT

After being a licensed attorney for a period of two (2) years, the petitioner has been barred from the practice of law without any hearing on the merits of the charges against him.

Minimum due process would require:

(a) Written notice of the charges against him.

(b) Disclosure of the evidence against him.

(c) Opportunity to be heard in person and to present witnesses and documentary evidence.

(d) The right to confront and cross-examine adverse witnesses.

(e) A "neutral and detached" hearing body.

Morrissey v. Brewer, 92 S.Ct. 2593 (decided June 29, 1972);

Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507 (1971).

In this case, there is a complete and total absence of due process.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted

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Counsel for Petitioner

APPENDIX

APPENDIX A

Board of Law Examiners,
State of Tennessee,

v.

Byron Morton Miller.

For the Petitioners:

Hugh T. Shelton, Jr., Columbia, Tennessee

For the Respondent:

C. Allen High, Nashville, Tennessee

OPINION

(Filed Sept. 5, 1972)

The Board of Law Examiners filed a petition in the Supreme Court by which they certified that Byron Morton Miller, a non-resident, had been granted, on February 4, 1970, a license to practice law in Tennessee. They further certified that since that date they had learned that Miller, in his application for his license, had made misrepresentations about his status, grades, and periods of attendance at two law schools he had attended and had filed with the Board documents purporting to have been signed by the deans but which, in fact, had not been signed by them or by anyone authorized to sign for them. The Board charged that Miller had obtained his license by fraud and that it should be revoked.

Publication was made for Miller and he filed a motion to dismiss the Board's petition, the grounds of the motion being that the statute pursuant to which the petition was filed, Section 29-104, T.C.A., is unconstitutional since it

does not provide the respondent with procedural due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The provision of Section 29-104, T.C.A., on which the Board relies as authority that the license should be revoked is as follows:

> "Upon such certificate, if the Supreme Court shall find that such person is of full age and good moral character, and otherwise qualified, it shall enter an order licensing and admitting him to practice as attorney, solicitor and counselor in all the courts of the state, which license if procured by fraud, may be revoked at any time within two (2) years."

The Board filed its certification within the two year period. Rule 37 of the Supreme Court, promulgated pursuant to Section 29-104, T.C.A., provides for both notice, which the Board has certified was given, and an opportunity for a hearing before the Board of Law Examiners, and provides adequate means for the respondent to refute the charges of misconduct and fraud in the procurement of his license to practice law.

The following language, which we consider appropriate to this case, is from **In re Bowers**, 138 Tenn. 662, 200 S.W. 831 [1917]:

> "The certificate of the board is the only thing which the legislature intended that we should consider, and when the board refuses to make a certificate, or, as in this case, certifies that the applicant is an unfit person to be admitted to the practice, that ends the matter in the absence of an allegation and proof of fraud, corruption, or oppression upon the part of the board. We held in the former case* that this court

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* **In re Bowers**, 137 Tenn. 189, 194 S.W. 1093 [1916].

has no jurisdiction to entertain originally a petition to revise the judgment of the board. We hold now that, where the matters complained of are mere considerations of judgment or opinion upon the part of the board, this court will not and cannot undertake to revise its action. We think this is the proper construction of the act referred to."

The Board of Law Examiners certified to this Court that in their judgment and opinion Miller obtained his license by fraud and that it should be revoked as provided by the statute.

The respondent has not been denied due process guaranteed him by the Fourteenth Amendment of the Constitution of the United States. He was given an opportunity to offer proof to rebut the charges that had been made against him. He chose not to avail himself of this opportunity.

It is certain that if the acts of misrepresentation, which the Board has now certified to us, had been known either to the Board or this Court previous to the certification and granting of the respondent's license to practice law, the Board would not have certified him, and the Court would not have granted him his license.

We direct that the name of Byron Morton Miller be stricken from the rolls of attorneys and that he be prohibited from engaging in the practice of law in this State.

/s/ GEORGE F. McCANLESS
GEORGE F. McCANLESS, Justice

Dyer, C.J., Chattin, J.,
and Jenkins, Sp. J., concur.

To the Honorable Justices of the Supreme Court
of Tennessee, Nashville, Tennessee

Board of Law Examiners, State of Tennessee

versus

Byron Morton Miller, a Non-Resident of the State of Tennessee

PETITION

(Filed February 3, 1972)

Petitioner would respectfully show to the Court that:

I

Petitioner did certify to this Honorable Court the Respondent, Byron Morton Miller, as one of several applicants who had passed the required examination and in other respects, complied with the rules regulating the admission to practice as attorney, solicitor and counselor in the State of Tennessee and as a result of which a license to practice law was issued to Respondent on February 4, 1970.

II

Since said certification, the following circumstances have come to the attention of the Petitioner.

1. A letter dated July 17, 1968, from Noble W. Lee, Dean, John Marshall Law School, to Memphis State University Law School states that Respondent was at that time, a student in good standing and eligible to return to the John Marshall Law School, when in fact, Respondent was under suspension for aca-

demic deficiencies. The signature of "Noble W. Lee" is not his or the signature of any person authorized to sign for him. This letter enclosed a transcript which is the subject of Paragraph 2.

2. Transcript from John Marshall Law School has the grades on Property II, Federal Procedure and Business Association, changed from "D" to "C". Status of student is changed from "Suspend" to "Off Pro".

3. Certificate of Course of Legal Study, a document required in connection with the application for a license to practice law, erred in its recitation that Respondent was enrolled in Memphis State from February, 1965 and attended school to May, 1969, and the signature of "R. D. Cox" is not his or the signature of any person authorized to sign for him.

4. Misrepresentations contained in application to Board of Law Examiners:

(a) Question No. 2 recites Respondent's residence in Memphis, Tennessee, from February, 1965 to date of application which is incorrect.

(b) Question No. 4 (c) recites Respondent's attendance at Memphis State University Law School from February, 1965 to May 31, 1969, which is incorrect.

(c) Question No. 6 denies a record of any employment which is incorrect.

(d) Question No. 18 (b) denies that the applicant was discharged from any employment which is incorrect.

III

The foregoing constitute misrepresentations of fact, without which the applicant would not have been certified to this Honorable Court pursuant to Section 29-104

T.C.A. and therefore, Petitioner charges that the license issued by this Honorable Court to the Respondent on February 4, 1970 was procured by fraud and should be revoked.

IV

Premises Considered, Petitioner Prays:

1. That service of process be made by publication as to the Respondent, he being a non-resident of this State, compelling Respondent to appear and answer this petition.

2. That this Honorable Court revoke the license to practice law heretofore issued the Respondent, Byron Morton Miller, on February 4, 1970.

3. That a copy of this order issue to the tribunals of this State to assure that Respondent is excluded from the practice of law in all the Courts of this State.

4. That Petitioner have such other relief to which it may be entitled.

/s/ HUGH T. SHELTON, JR.
President of the Board
of Law Examiners

State of Tennessee
County of Maury

Hugh T. Shelton, Jr., being duly sworn, makes oath that the above stated facts are true to the best of his information and belief.

/s/ HUGH T. SHELTON, JR.

Sworn and subscribed to before me, this 1st day of February, 1972.

/s/ JUDY L. GRAHAM
Notary Public

My commission expires: July 17, 1972.

Supreme Court, Nashville

Board of Law Examiners,
State of Tennessee,

vs.

Byron Morton Miller.

This cause coming on to be heard upon petition of the Board of Law Examiners to revoke the license to practice law in the State of Tennessee of Byron Morton Miller, pursuant to Section 29.104, T.C.A., upon the ground that said license was obtained by fraud, and motion of respondent to dismiss upon the ground that said Section 29-104, T.C.A., is unconstitutional, briefs and argument of counsel; upon consideration whereof, the Court is of opinion that pursuant to Rule 37 of the Supreme Court, promulgated pursuant to Section 29-104, T.C.A., notice was given and respondent provided an opportunity for a hearing before the Board to refute the charges of misconduct and fraud, and that respondent has not been denied due process guaranteed by the Fourteenth Amendment of the Constitution of the United States.

It is, therefore, ordered and decreed by this Court that the name of Byron Morton Miller be stricken from the rolls of attorneys and that he be prohibited from engaging in the practice of law in this State.

The costs of the cause will be paid by Byron Morton Miller, for which let execution issue. 9/5/72.

In the Supreme Court of Tennessee

Board of Law Examiners,
State of Tennessee,
Petitioners,

vs.

Byron Morton Miller,
Respondent.

MOTION TO DISMISS

Comes now the respondent, Byron Morton Miller, and respectfully moves the Court to dismiss the Petition filed against him upon the following grounds:

The Petition was filed pursuant to Tennessee Code Annotated 29-104 which act is unconstitutional and void because it does not provide the respondent with procedural due process, therefore, the act violates the respondent's constitutional rights as provided by the Fourteenth Amendment of the United States Constitution.

/s/ C. ALLEN HIGH
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